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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.      | CONFIRMATION NO. |
|--|-------------|----------------------|--------------------------|------------------|
| 10/516,973   | 03/08/2005  | Xavier Miret Gayet   | P/189-358                | 1342             |
| 2352   | 7590        | 06/23/2006           | EXAMINER                 |                  |
| OSTROLENK FABER GERB & SOFFEN<br>1180 AVENUE OF THE AMERICAS<br>NEW YORK, NY 100368403 |             |                      | GERRITY, STEPHEN FRANCIS |                  |
|  |             |                      | ART UNIT                 | PAPER NUMBER     |
|  |             |                      | 3721                     |                  |

DATE MAILED: 06/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/516,973

Applicant(s)

GAYET, XAVIER MIRET

Examiner

Stephen F. Gerrity

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 December 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/6/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152).
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### **Response to Preliminary Amendment**

1. Receipt is acknowledged of a preliminary amendment, filed 6 December 2004, which has been placed of record and entered in the file.

### **Information Disclosure Statement**

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### **Drawings**

3. The drawings are objected to because in figure 8, the number labels "24" and "25" each are indicating the wrong cavity -- based on a reading of the written description at page 6, line 33 through page 7, line 9. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several

views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "two areas are arranged between the inner profile and the outer profile, parallel to said profiles and inwardly from the inner profile" (claims 6 and 8) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

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application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### **Specification**

5. The abstract of the disclosure is objected to because of the use of legal phraseology (i.e. means, said) in lines 6, 10 and 11. Correction is required. See MPEP § 608.01(b).

6. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

7. The use of the trademark "TEFLON" has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

8. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the "two areas are arranged between the inner profile and the outer profile, parallel to said profiles and inwardly from the inner profile" (claims 6 and 8) fails to find support in the written description. The written description describes and figure 8 shows, two cavities with one between the inner and outer walls, and a second inwardly of the inner wall. The written description and the figures do not show two cavities between the inner and outer walls.

#### **Claim Objections**

9. The claims are objected to because in the listing of the claims submitted with the preliminary amendment dated 6 December 2004 there is a line of text between the end of claim 5 and the beginning of claim 6 which must be deleted. A new set of claims is required in response to this Office action. Appropriate correction is required.

10. Claims 2-9 are objected to because each of the claims 2-7 begins with the text "A device" while claim 1 begins with the text "A system". Applicant is requested to amend the claims so that consistent introductory text and terminology is used. Appropriate correction is required.

#### **Claim Rejections - 35 USC § 112**

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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12. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Regarding claim 1, lines 1 and 2, the phrase "especially for sealing containers ..." renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Regarding claim 1, line 2, the use of the close ended phrase "consisting of" appears to be inappropriate because further limitations to the claim(s) would be improper and render the scope of the claims indefinite. It is suggested that the close ended phrase "consisting of" be changed to the open ended phrase "comprising".

Claim 6, lines 2 and 3, the limitations "the inner profile" and "the outer profile" each lack antecedent basis.

Claim 8, lines 2 and 3, the limitations "the inner profile" and "the outer profile" each lack antecedent basis.

These and any other informalities should be corrected so that the claims may particularly point out and distinctly claim the subject matter which applicant regards as the invention, as required by 35 U.S.C. § 112, second paragraph.

**Claim Rejections - 35 USC § 103**

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gayet (EP 1,110,701) in view of Sfikas et al. (US 6,254,707).

The Gayet reference discloses a system/device for sealing containers which meets all of applicant's claimed subject matter with the exception of the inner wall and outer wall, with the outer wall of a slightly larger height, finished in an angled edge profile. The Sfikas et al. reference discloses an ultrasonic sealing device including a die (10) featuring two concentric walls with an inner wall (14) for welding the sheet layers (41, 42, 43) and an outer wall (12) of a slightly larger height finished in an angled edge profile for cutting the sheet layers (41, 42, 43) -- as seen in figures 9-11. As seen in figure 10, the inner wall has a continuous linear edge (claim 2). As seen in figure 9, the inner wall has a broken edge (claim 3). As seen in figure 11, the inner wall and outer wall are separate and are independent, that is the portions which extend downwardly from cavity (24) (claim 4). As seen in figure 11, the inner wall and outer wall are joined, forming a single wall, that is the portions that extend upwardly from the cavity (24) (claim 5). It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified the Gayet system/device for sealing containers by having modified the mold walls (9) to have comprised an inner wall and



outer wall, with the outer wall of a slightly larger height, finished in an angled edge profile, as suggested by Sfikas et al., in order to seal and cut the material layers to leave a finished edge running parallel and adjacent to the seal applied to the margin of the article. Additionally, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have further modified the Gayet system/device for sealing containers having included the inner wall has a continuous linear edge (claim 2), the inner wall has a broken edge (claim 3), the inner wall and outer wall are separate and are independent (claim 4), and the inner wall and outer wall are joined, forming a single wall (claim 5), as suggested by Sfikas et al., in order to seal and cut the material layers to leave a finished edge running parallel and adjacent to the seal applied to the margin of the article.

**15.** Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 3 and 5 above, and further in view of Kuroda (**US 3,629,035**).

The Gayet system/device for sealing containers, as modified by Sfikas et al., meets all of applicant's claimed subject matter with the exception of the edge of the inner wall is transversely located in extension of the edge of the outer wall. The Kuroda reference discloses a similar type of heat sealing arrangement including an edge (5 - where the "W" is located) of the inner wall is transversely located in extension of the edge (4) of the outer wall. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have further modified the Gayet system/device for sealing containers by having modified the inner and outer walls to

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have had the edge of the inner wall be transversely located in extension of the edge of the outer wall, as taught by Kuroda, in order to provide a single wall for both sealing and cutting the material layers.

### **Conclusion**

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references cited on the attached form (PTO-892) are cited to show various sealing devices. All are cited as being of interest and to show the state of the prior art.

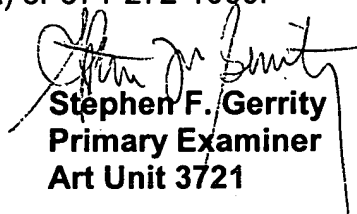
17. For the record, no prior art has been applied in regards to claims 6 and 8.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen F. Gerrity whose telephone number is 571-272-4460. The examiner can normally be reached on Monday - Friday from 5:30 - 2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
**Stephen F. Gerrity**  
**Primary Examiner**  
**Art Unit 3721**

11 June 2006